

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2206335

Decision Date: 10/17/2022

Hearing Date: 09/30/2022

Hearing Officer: Christopher Taffe

Appearance for Appellant:
Appellant, pro se (by phone)

Appearance for MassHealth:
Sheldon Sullaway, DMD (Consultant, on
behalf of DentaQuest) (by phone)



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	APPROVED	Issue:	PA – Dental – Replacement Denture
Decision Date:	10/17/2022	Hearing Date:	09/30/2022
MassHealth's Rep.:	S. Sullaway, DMD	Appellant's Rep.:	Appellant, pro se
Hearing Location:	HarborSouth Tower, Quincy		(Heard Remotely)

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated on or around August 16, 2022, MassHealth denied Appellant's request for approval of a lower partial removable denture. See Exhibit 1 and 130 CMR 420.428. Appellant requested a timely appeal by phone with MassHealth on August 22, 2022. See Exhibit 1; 130 CMR 610.015(B). Challenging a denial of a request for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for replacement of a a lower partial removable denture.

Issue

Are there circumstances present which allow Appellant to get a replacement partial denture?

Summary of Evidence

Appellant is a MassHealth member between the ages of 21 and 65 who appeared and testified for hearing by phone. Dr. Sullaway appeared by phone on behalf of DentaQuest, who is the third-party administrator of the MassHealth Dental program.

In August of 2022, Appellant's dental provider at the Whittier Street Community Health Center (Whittier CHC) submitted a request for approval of prior authorization (PA) # 202222900494600 to the MassHealth dental program. The PA request sought a replacement lower partial denture for the Appellant.¹ MassHealth denied the request because, per the agency's records, a set of upper and lower partial dentures had been approved in September 2017 and, per the MassHealth regulation, dentures are provided once per every 7 years unless there is a regulatory exception. MassHealth testified that none of the exceptions were thought to apply to this case. The MassHealth Representative did not provide specifics as to why certain exceptional circumstances did not apply but acknowledged that MassHealth had received a request from a provider that indicated the dentures were broken and that it was a medical necessity but MassHealth indicated that medical necessity did not apply for requests for MassHealth members, like Appellant, over the age of 21.

Appellant testified that she is having trouble with solid food and keeping food down, and she is losing weight because of the lack of a denture. Appellant's PA request contained an August 16, 2022 from a medical doctor at Whittier CHC stating in part: *"...[Appellant] has recently broken her dentures/fragmented and she is unable to chew/masticate her food, she swallows improperly masticated food and has resultant episodes of nausea and vomiting when she eats. She is unable to have proper caloric and nutritional intake due to her broken and dysfunctional dentures, and she is losing weight and becoming weak due to the lack of food intake."* See Exhibit 3.

Appellant stated that her upper denture is fine but the problem is only with her lower dentures, which have broken almost in half. She described the break as occurring near the middle of the denture, to the part closest to the anterior part of the mouth. They have broken once before, but were able to get glued back together. Appellant testified that with this second break, her providers have told her that this same type of fix will not work, and Appellant explained that it has been impossible to re-glue it so that the denture halves can line up properly.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. Appellant requested a lower partial denture replacement from the MassHealth agency. (Testimony and Exhibits 1 and 3)
2. MassHealth denied the request as Appellant received both a lower partial denture and an upper partial denture from the agency in September 2017. (Testimony)

¹ The denture discussed in this decision is the removable type, and not the fixed type.

3. The upper denture is still functioning and being used by the Appellant. (Testimony)
4. As to the lower denture, it has now broken twice, with it breaking almost in half, near the part that would be in the anterior or center part of the lower jaw when inserted. (Testimony)
 - a. Appellant's has a medical provider at Whittier CHC who wrote that the lower dentures were broken and fragmented, and that this was creating a medical risk due to her inability to masticate food and get proper food intake. (Testimony and Exhibit 3)
 - b. Both Appellant's provider and Appellant herself have indicated via writing and testimony that Appellant has recently lost weight because of the broken denture. (Testimony and Exhibit 3)
 - c. The lower partial denture has already been glued back together once, but there are difficulties with getting the halves of the denture to line up during this second break. (Testimony)

Analysis and Conclusions of Law

As a rule, the MassHealth agency and its dental program pays only for medically necessary services to eligible MassHealth members and may require that such medical necessity be established through a prior authorization process. See 130 CMR 450.204; 130 CMR 420.410. In addition to complying with the Prior Authorization requirements at 130 CMR 420.410 et seq.,² covered services for certain dental treatments, including removable prosthodontic devices such as dentures, are subject to the relevant limitations of 130 CMR 420.421 through 420.456. See 130 CMR 420.421 (A) through (C).

130 CMR 420.428 contains the relevant description and limitation for prosthodontic devices like those dentures at issue in this appeal, including specific sections regarding replacement request for such dentures. That regulation reads in relevant part as follows:

420.428: Service Descriptions and Limitations: Prosthodontic Services (Removable)

(A) General Conditions. The MassHealth agency pays for dentures services once per seven calendar years per member, subject to the age limitations specified in 130 CMR 420.428(B). MassHealth payment includes all services associated with the fabrication and delivery process, including all adjustments necessary in the six months following insertion. The member is responsible for all denture care and maintenance following insertion. The MassHealth agency

² 130 CMR 420.410(C) also references and incorporates the MassHealth Dental Program Office Reference Manual ("Dental ORM" or "Dental Office Reference Manual") publication as a source of additional explanatory guidance beyond the regulations. It is noted that references in the regulations to the "Dental Manual" include the pertinent state regulations, the administrative and billing instructions (including the HLD form), and service codes found in related subchapters and appendices. See <https://www.mass.gov/lists/dental-manual-for-masshealth-providers> (last viewed on October 5, 2022).

does not pay for complete dentures when the member's medical record indicates material limitations to the member's ability to cooperate during the fabrication of the denture or to accept or function with the denture, or indications that the member does not intend to utilize the denture.

...

(E) Removable Partial Dentures. The MassHealth agency pays for removable partial dentures if there are two or more missing posterior teeth or one or more missing anterior teeth, the remaining dentition does not have active periodontitis, and there is a favorable prognosis for treatment outcome. A tooth is considered missing if it is a natural tooth or a prosthetic tooth missing from a fixed prosthesis. Payment for a partial denture includes payment for all necessary procedures for fabrication including clasps and rest seats.

(F) Replacement of Dentures. **The MassHealth agency pays for the necessary replacement of dentures. The member is responsible for denture care and maintenance. The member, or persons responsible for the member's custodial care, must take all possible steps to prevent the loss of the member's dentures.** The provider must inform the member of the MassHealth agency's policy on replacing dentures and the member's responsibility for denture care. **The MassHealth agency does not pay for the replacement of dentures if the member's denture history reveals any of the following:**

- (1) **repair or reline will make the existing denture usable;**
- (2) any of the dentures made previously have been unsatisfactory due to physiological causes that cannot be remedied;
- (3) a clinical evaluation suggests that the member will not adapt satisfactorily to the new denture;
- (4) no medical or surgical condition in the member necessitates a change in the denture or a requirement for a new denture;
- (5) **the existing denture is less than seven years old and no other condition in this list applies;**
- (6) the denture has been relined within the previous two years, unless the existing denture is at least seven years old;
- (7) there has been marked physiological change in the member's oral cavity, and any further reline has a poor prognosis for success; or
- (8) the loss of the denture was not due to extraordinary circumstances such as a fire in the home.

(G) Complete Denture Relines. The MassHealth agency pays for chairside and laboratory complete denture relines. Payment for dentures includes any relines or rebases necessary within six months of the insertion date of the denture. The MassHealth agency pays for subsequent relines once every three calendar years per member.

(**Bolded emphasis added.**)

In this matter, 130 CMR 420.428(A) through (G) lay out the framework for denture benefits for MassHealth beneficiaries and their possible replacement and repair. There is a strong regulatory presumption that replacement dentures cannot be granted for those dentures which are less than seven years unless some extraordinary or unusual circumstance or exception, such as those in 130

CMR 420.428(F)(1) through (4) or (6) through (8),³ exists.

Before looking at the replacement denture, I will first address the issue raised at hearing by MassHealth. MassHealth stated that “medical necessity” could not be used to justify the request for adults over the age of 21, and in doing so, MassHealth cited to 130 CMR 420.421(B). However that reliance on that citation is misplaced, as the 420.421(B) regulation specifically deals with non-covered services like implants, veneers, and other cosmetic services. The relevant parts of 130 CMR 420.421 are as follows:

420.421: Covered and Non-covered Services: Introduction

(A) Medically Necessary Services. The MassHealth agency pays for the following dental services when medically necessary:

(1) the services with codes listed in Subchapter 6 of the Dental Manual, in accordance with the service descriptions and limitations described in 130 CMR 420.422 through 420.456; and

(2) all services for EPSDT-eligible members, in accordance with 130 CMR 450.140 through 450.149, without regard for the service limitations described in 130 CMR 420.422 through 420.456, or the listing of a code in Subchapter 6. All such services are available to EPSDT-eligible members, with prior authorization, even if the limitation specifically applies to other members younger than 21 years old.

(B) Non-covered Services. The MassHealth agency does not pay for the following services for any member, except when MassHealth determines the service to be medically necessary and the member is younger than 21 years old. Prior authorization must be submitted for any medically necessary non-covered services for members younger than 21 years old.

(1) cosmetic services;

(2) certain dentures including unilateral partials, overdentures and their attachments, temporary dentures, CuSil-type dentures, other dentures of specialized designs or techniques, and preformed dentures with mounted teeth (teeth that have been set in acrylic before the initial impressions);

(3) counseling or member education services;

(4) habit-breaking appliances;

(5) implants of any type or description;

(6) laminate veneers;

(7) oral hygiene devices and appliances, dentifrices, and mouth rinses;

(8) orthotic splints, including mandibular orthopedic repositioning appliances;

(9) panoramic films for crowns, endodontics, periodontics, and interproximal caries;

³ As stated repeatedly by the Board of Hearings in the past, the regulation in 130 CMR 420.428(F) is written in an extremely confusing English manner and could use a re-write in order for the regulation to be easier to decipher and apply. Specifically, the sentence immediately preceding the conditions in subsections (F)(1) through (8) is written in the negative (“does not pay...if [conditions (1), (2), (3)...(8) exist]”), but then some of the conditions subsequent are written in a negative tense (i.e. “cannot”) while others are written with a positive. Compare e.g., 130 CMR 420.428(F)(2) and (F)(8) (written in the negative) with (F)(1) (written in the positive). Further, 130 CMR 420.428 (F)(5) only applies as a restriction that comes into play so long as none of (F)(1) through (4) and (F)(6) through (8) apply. It would be easiest for all parties and legal analysis if the agency could rewrite this regulation in a more logically systematic and proper English manner that clearly lays out the exceptions to the 7-year restriction.

- (10) root canals filled by silver point technique, or paste only;*
- (11) tooth splinting for periodontal purposes; and*
- (12) any other service not listed in Subchapter 6 of the Dental Manual.*

In other words, a MassHealth member over the age of 21 can't use "medical necessity" to justify a request for any of the non-covered services. But in this case, the requested partial denture is not part of the items in 130 CMR 420.421(B)(1) through (12). As discussed above, partial dentures are specifically discussed in 130 CMR 420.428 and thus they may be granted if there is medical necessity, subject to the service limitations of 130 CMR 420.428. See 130 CMR 420.421(A)

130 CMR 450.204 speaks to the medical necessity issue for all MassHealth providers. 130 CMR 450.204 reads in relevant part as follows:

450.204: Medical Necessity

The MassHealth agency does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is medically necessary if

*(1) it is **reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions** in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and*

*(2) **there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency.** Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.*

*(B) **Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.** A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)*

...

*(D) **Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.***

(Bolded emphasis added.)

With that established, I first conclude that there is some medical necessity demonstrated by Appellant, in that both her and her medical provider have provided evidence in the form of letter and testimony explaining how the dentures are needed to help with her food intake, and MassHealth did not offer any alternative services or suggestions. As to the service limitation, there is the 7-year restriction on replacement dentures, but there are exceptions. I find that Appellant, through her

testimony about the multiple times that her lower denture has broken and how she and her provider are currently unable to put it back together so that the denture can fit with her lower teeth, has demonstrated that there is no form of repair that can make the current lower partial denture reusable. Accordingly, per the exception codified in 130 CMR 420.428(F)(1) and (F)(5), I conclude that MassHealth can and should pay for the requested lower partial denture replacement.

This appeal is APPROVED.

Order for MassHealth

Rescind the denial for PA # 202222900494600, and approve the request for the replacement lower partial denture (D5212). Send an approval notice to Appellant and her dental provider as soon as possible, and no later than 30 days from the date of the decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact the MassHealth Dental Program through MassHealth Customer Service.⁴ If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: DentaQuest

⁴ The direct Customer Service number for DentaQuest for MassHealth members is 1-800-207-5019. The general number for MassHealth Customer Service is 1-800-841-2900.